REMARKS

Claims 15-22, 96-97, 101-121 are currently pending in the application. Applicant has canceled claims 12, 14, 88-95, and 98-100, amended claim 15, and added claims 119-121. Claims 101-117 have been withdrawn by the Examiner. Applicant requests reconsideration of the application in light of the following remarks.

Telephone Interview

Applicant's representative wishes to thank the Examiner for his courtesy and time during a telephone interview that was held on March 23, 2006. The Examiner's comments were helpful in preparing this response. It is hoped that the comments below reflect the spirit of the interview and Applicant's good efforts in working with the Examiner to reach an agreement with regard to the patentable subject matter of this application.

Restriction Requirement

Applicant affirms the provisional election of Group II, claims 15-22, 96-97, and 118, made in the written response to the election requirement mailed on June 16, 2005. New claims 119-121 are directed to the same invention of the program product as is recited in claims 15-22, 96-97, and 118, and should be examined together with these claims. No correction to the inventorship is required.

Rejections under 35 U.S.C. §112

Claim 15 stands rejected by the Examiner under 35 U.S.C. 112. In accordance with this rejection, the claims have been amended to comply with the examiner's suggestions and are now

believed to conform with Section 112. Applicant respectfully requests that the rejection of claim 15 under 35 U.S.C. § 112 be withdrawn.

In particular, the Applicant has replaced the term "message recipients" with the term "customers" which is supported in the original disclosure at page 73, line 11, for example, and in other places throughout the original specification.

Rejections under 35 U.S.C. §103

To establish a *prima facie* case of obviousness under 35 U.S.C. §103, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Third, the cited prior art reference must teach or suggest all of the claim limitations. Furthermore, the suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based upon the Applicant's disclosure. A failure to meet any one of these criteria is a failure to establish a *prima facie* case of obviousness. MPEP §2143.

Claims

Claims 15-22, 96, 97 and 118 were rejected by the Examiner under 35 U.S.C. § 103(a) as being unpatentable over Hendricks et al. (U.S. Patent No. 6,463,585, hereinafter "Hendricks"), in light of Wachob (U.S. Patent No. 5,155,591, hereinafter "Wachob"). Applicant respectfully traverses this rejection and requests reconsideration of the claims.

The Examiner asserts that Hendricks has "a program product" and refers to column 4, lines 29-32. However, the "program" referred to in these lines is not a "program product". Rather column 4, lines 29-32 refer to television "programing" with a main "program channel" and a

number of feeder channels. Therefore, it is impossible for any "program product" of column 4, lines 29-32 to be a "program product" comprising "an advertising plan optimization mechanism" as recited in claim 15. That is, the television programs and television channels carrying programming as described in column 4, lines 29-32 of Hendricks do not comprise "an advertising plan optimization mechanism".

Claim 15 has been amended to recite that the "advertising plan optimization mechanism schedules a distribution of an advertising message". Hendricks does not deal with "scheduling a distribution of an advertising message" in the same way as does the present invention. Rather, Hendricks' invention targets individuals or demographic groups and inserts advertising messages based on feedback from individual television terminals. Therefore, Hendricks does not modify the advertising plan by "modifying the distribution of the advertising message within the advertising schedule", and "evaluating a resulting advertising plan to achieve one of an improved and an optimal advertising plan for the message". That is, as now recited, claim 15 requires modification of the distribution of the advertising message and evaluation of the overall plan for the advertising message. This is not taught or suggested by Hendricks or Wachob. Therefore, claim 15 is considered to be patentable over these references.

Even if Hendricks can be considered to include scheduling of an advertising message, Hendricks does not have any evaluation of a resulting advertising plan. Any scheduling is done and modified on a terminal-by-terminal basis so that the "blinders are on" as to the other individual terminals within a selected group. This does not teach or suggest the step of "evaluating a resulting advertising plan to achieve one of an improved and an optimal advertising plan for the message" as recited in claim 15.

It should be noted that Hendricks teaches the use of a default program advertisement and selective replacement of the default advertisement by one of a plurality of advertisements on a number of feeder channels. Thus, Hendricks seeks to take multiple advertisements and to place the multiple advertisements on optimal television terminals. Conversely, the presently claimed

invention seeks to determine an optimal television network or other media vehicle by which a particular advertising message will be exposed to potential customers. Thus, Hendricks also falls short of claim 15 language "schedules a distribution of an advertising message on one or more broadcast or other shared media vehicles".

Claims 16-17 are considered to be allowable as depending from allowable claim 15 and for further patentable features therein as may be appreciated by the Examiner.

Claim 18 is also considered to be allowable. In particular, the Examiner referred to column 20, lines 43-66 as a basis for rejecting the recitation of "iteratively modify the adverising plan". Firstly, the advertising plan recited in base claim 15 is nothing like the movie sales lists described in column 20, lines 43-66 of Hendricks. Therefore, there would be no reason to apply the placement process of the movies of Hendricks to the advertising message (note "message" is singular) of claims 15 and 18. Furthermore, the process described in column 20, lines 43-66 is a response to low orders of certain movies. This response appears to be for dealing with excess inventory or some other purpose unrelated to an iterative optimization of matching an advertising message with a targeted potential customer based on data, as is recited in claims 15 and 18. Therefore, Hendricks additionally fails to teach or suggest the invention of claim 18.

Claims 19-22 and 96-97 are considered to be allowable as depending from allowable claims 15 and 18, and for further patentable features therein as may be appreciated by the Examiner.

Claim 118 is considered to be allowable for the same reasons as claim 18 as described above and for further additional recitation that the advertising plan is iteratively modified "using at least one of an exposure valuation index, an audience valuation index and an exposure index". A word search applied to Hendricks turns up no derivative of the word "exposure". Similarly, there is no reference to "forecast". Utilizing exposure value and exposure recency indexes among other indexes and forecasting or optimizing based on these indexes are features of the present invention recited in claims 15 and 118. These features are not taught by Hendricks with reference to

creating a plan and scheduling a distribution of an advertising message. Therefore, claim 118 is additionally considered to be allowable over Hendricks and Wachob.

New claim 119 has been added to emphasize the distinction set forth in the paragraph immediately above. Therefore, claim 119 is considered to be allowable over Hendricks and Wachob.

New claim 120 further defines the invention of Claim 119 so that the "advertising plan optimization mechanism utilizes at least one database made up of non-real time data in creating the advertising plan, scheduling the distribution of the advertising message, modifying the advertising plan, and evaluation the resulting advertising plan". Even if Hendricks initially utilizes non-real time data in an original placement of advertisement spots, any optimization of Hendricks appears to be a reactionary real time placement that teaches away from planning and scheduling an advertisement message distribution. Therefore, claim 120 further defines over Hendricks and Wachob and is patentable.

New claim 121 has been added to include reference to a "media planner" and a "user interface" connected to the "user interface" for use by the "media planner". These aspects of claim 121 define over Hendricks because Hendricks' system is completely automated with regard to the placement of advertisement spots from a plurality of available advertisement spots. Therefore, no media planner is required with the system of Hendricks, and no user interface associated with the "advertising plan optimization mechanism" is required. Claim 121 also additionally has the same elements as does claims 15 and 120. Therefore, claim 121 is considered to be patentable.

Applicant respectfully requests that the obviousness rejections of claims 15-22, 96-97, and 118 be withdrawn.

Regarding Doctrine of Equivalents

Applicant hereby declares that any amendments herein that are not specifically made for the purpose of patentability are made for other purposes, such as clarification, and that no such

changes shall be construed as limiting the scope of the claims or the application of the Doctrine of Equivalents.

CONCLUSION

Applicant respectfully requests that a timely Notice of Allowance be issued in this case.

It is requested that a three-month extension of time be granted for the filing of this response, and the appropriate extension filing fee of $510.00 is enclosed herewith.

The amendments herein added no new claims over the number previously paid for, resulting in no fees due.

If any fees, including extension of time fees or additional claims fees, are due as a result of this response, please charge Deposit Account No. 19-0513. This authorization is intended to act as a constructive petition for an extension of time, should an extension of time be needed as a result of this response. The examiner is invited to telephone the undersigned if this would in any way advance the prosecution of this case.

Respectfully submitted,

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